COMMONWEALTH OF MASSACHUSETTS
BEFORE THE
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of The Connecticut Light and Power Company for Findings under Section 32 (c) of the Public Utility Holding Company Act of 1935	)	D.T.E. 02-35

INITIAL BRIEF OF
THE CONNECTICUT LIGHT AND POWER COMPANY

I. INTRODUCTION

On May 17, 2002, The Connecticut Light and Power Company ("CL&P") petitioned the Department of Telecommunications and Energy ("Department") to make specific findings that will allow CL&P's divested assets in the Seabrook Nuclear Power Station ("Seabrook") to be determined by the Federal Energy Regulatory Commission ("FERC") to be "eligible facilities," pursuant to Section 32(c) of the Public Utility Holding Company Act of 1935 ("PUHCA").

CL&P is an electric public service company providing retail service in Connecticut and is subject to the jurisdiction of the Connecticut Department of Public Utility Control ("DPUC") pursuant to Title 16 of the Connecticut General Statutes. CL&P is divesting its ownership share in Seabrook to FPL Energy Seabrook, LLC ("FPLE Seabrook") pursuant to Section 7(b) of Connecticut Public Act 98-28, 'An Act Concerning Electric Restructuring' ("P.A. 98-28") (codified as Conn. Gen Stat. Section 16-244g) ("CT Act"). CL&P owns 4.05985 percent of Seabrook (Petition, p. 1). CL&P has no customers in Massachusetts and the divestiture of

CL&P's generating assets will not affect Massachusetts' customers' rates. (Exh. CL&P-1; Petition, p. 2).

CL&P filed its petition with the Department because the Department has jurisdiction over the retail rates of Western Massachusetts Electric Company ("WMECO"), which along with CL&P is an electric company affiliate of Northeast Utilities, a registered holding company under PUHCA. As such, findings by the Department are necessary if the new owners of CL&P's Seabrook assets are to obtain Exempt Wholesale Generator ("EWG") status. EWG status is critical to FPLE Seabrook because it allows it to own and operate the assets without regulation as a public utility company under PUHCA. Exh. CL&P-1, p. 2.

In support of its petition, CL&P, on May 21, 2002, submitted its filing to the DPUC requesting approval of the sale of CL&P's Seabrook assets. In addition, on June 24, 2002, CL&P submitted the prefiled testimony of Donald M. Bishop (Exh. CL&P-1) and responded to interrogatories and record requests.

II. PROCEDURAL HISTORY

On June 7, 2002, pursuant to the Department's Order of Notice in this proceeding, FPLE Seabrook submitted comments in support of CL&P's request for Section 32(c) findings ("FPLE Seabrook Comments"). On June 12, 2002, the Department held a public hearing and procedural conference in this matter. No one from the public attended or made a statement at the public hearing. At the procedural conference the Hearing Officer granted full intervenor status to the Attorney General and FPLE Seabrook. J.P. Morgan Securities ("JPMorgan") sought and was granted limited intervention status. Procedural Conference, Tr. pp. 11-15.

At the procedural conference, the Hearing Officer consolidated D.T.E. 02-35 with two other proceedings, New England Power Company, D.T.E. 02-33, and Canal

Electric Company, Commonwealth Electric Company and Cambridge Electric Light Company, D.T.E. 02-34. Consolidation was for hearing purposes only. Procedural Conference, Tr. pp. 5-6.

The evidentiary hearing in the consolidated dockets was held on July 1, 2002 and CL&P's witness, Mr. Bishop, testified. Other than the witnesses for the proponents in D.T.E. 02-33 and 02-34, no other party presented testimony in this matter.

At the close of hearings, a number of exhibits were received into the record. Entered were Exh. CL&P-1, and Exhs. CL&P-DTE-1 through 17. Exh. CL&P-DTE-1 through 17 are responses to data requests. In addition, CL&P responded to one record request on July 10, 2002.

III. THE DEPARTMENT SHOULD MAKE THE FINDINGS UNDER SECTION 32(c) OF PUHCA TO ALLOW CL&P's DIVESTED ASSETS TO QUALIFY FOR ELIGIBLE FACILITIES STATUS.

As stated above, the underlying sale of Seabrook assets has occasioned the need for the requested findings. Seabrook was offered for sale in a public auction. The auction was conducted pursuant to New Hampshire RSA 369-B:3, IV(b)(13) and the CT Act. (FPLE Seabrook Comments, p. 2; Petition, p. 2). Pursuant to RSA 369-B:3, IV(b)(13) and the CT Act, the New Hampshire Public Utilities Commission ("NHPUC") and the DPUC selected JPMorgan, a nationally prominent investment banking firm, to conduct the auction. The auction was supervised by the NHPUC and the DPUC's specially appointed Utility Operations Management and Analysis auction team ("UOMA"). Petition, p. 2.

Pursuant to this supervision, JPMorgan developed a strategy for the auction, coordinated the production of the confidential offering memorandum and related

marketing materials, formulated and contacted a list of potential interested parties, coordinated management presentations, site visits and responses to bidders' due diligence, reviewed initial bid evaluations and, in consultation with NHPUC staff and UOMA, chose the winning bidder. Petition, pp. 2-3; Tr. pp. 46-47: FPLE Seabrook Comments, p. 3.

In sum, the sale of CL&P's share of Seabrook was accomplished through a competitive auction that ensured complete, uninhibited, non-discriminatory access to all data and information by all participants, as is required for the divestiture of assets by Massachusetts entities under the Massachusetts Electric Utility Restructuring Act (Chapter 164 of the Acts of 1997). In addition, as a witness testified at hearings, "[i]t is a very good deal for customers, in that it's a record sale price…" (Tr. p. 117).

On April 13, 2002, a Purchase and Sale Agreement was entered into between CL&P and other owners of Seabrook and the winning bidder, FPLE Seabrook. FPLE Seabrook is an indirect, wholly-owned special-purpose subsidiary of FPL Energy, LLC, the independent power producer subsidiary of FPL Group. FPL Group, through Florida Power and Light Company, also owns and operates four nuclear generating units similar in design to Seabrook.

As a condition to closing CL&P's sale to FPLE Seabrook, FPLE Seabrook must obtain the determination of the Federal Regulatory Commission ("FERC") that FPLE Seabrook is an "exempt wholesale generator" ("EWG") under Section 32 of PUHCA. Tr. pp. 114-117. As Mr. Bishop testified,

> EWG status is critical to FPLE Seabrook because it allows ownership and operation of Seabrook Nuclear Power Station without regulations as a public utility company under PUHCA…. Without the EWG condition, the

> Seabrook assets would be virtually unmarketable, and, in any event, the purchase price realized by CL&P and the other participating joint owners would likely have been greatly reduced. EWG status is a closing condition, and, as such, is crucial to obtaining the benefits of the sale [Exh. CL&P-1, p. 3].

FERC's EWG finding must be based, in part, on a determination that the purchased facilities are "eligible facilities."[1] If the cost of such facilities (other than costs recovered through wholesale rates) were reflected in the seller's retail rates as of October 24, 1992, FERC's determination that they are "eligible facilities" depends on specific determination by:

(1) the state regulatory commission having jurisdiction over such facilities, and

(2) every state commission having jurisdiction over the retail rates and charges of an affiliate, if the seller is part of a registered holding company, as defined by PUHCA.

As stated above, CL&P is a subsidiary of a registered holding company. Therefore, in order to obtain the required "eligible facilities" determination from FERC, a specific determination must be obtained from the Department (because CL&P's affiliate WMECO operates in Massachusetts) and other applicable state commissions.

The specific determination required of the Department is that allowing the divested assets to be "eligible facilities":

(a) will benefit consumers;

(b) is in the public interest; and

---

[1] Section 32(a)(2) of PUHCA defines "eligible facility" as:

> a facility, wherever located, which is either (A) used for the generation of electric energy exclusively for sale at wholesale, or (B) used for the generation of electric energy and leased to one or more public utility companies, Provided, however, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 834e of Title 16.

(c) does not violate state law.[2]

The determination set forth above should be made for several reasons. First, consumers will benefit because additional generating capacity will be available for sale in the competitive market. Because the competitive market is expected to function more efficiently than the rate-regulated system of generation, consumers should ultimately benefit through lower prices. This benefit has been recognized by the Department in the context of electric utility restructuring in Massachusetts. Second, designation of the facilities as eligible facilities is in the public interest because it supports the Commonwealth's stated goals of eliminating the vertical integration of the electric utility industry and of making electricity generation a competitive function. Third, such designation does not violate State law. On the contrary, the sale is completely consistent with the Massachusetts Electric Utility Restructuring Act (Chapter 164 of the Acts of 1997) and G.L. c. 164. In addition, the determination should be made in order to allow the very favorable price from the sale of Seabrook to flow to customers in the New England region, including affected customers in Massachusetts. Tr. pp. 114-117; FPL Seabrook Comments, p. 3.

---

[2] In pertinent part, Section 32(c) of PUHCA (15 U.S.C.A. § 79z-5a(c)) provides as follows:

> (c) State Consent for Existing Rate-Based Facilities. If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit customers, (2) is in the public interest, and (3) does not violate state law; Provided, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:
>
> (A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company;….

Based on almost an identical set of facts, the Department issued the requested findings to CL&P in D.T.E. 00-69 (December 21, 2000) (sale of Millstone Nuclear Power Station assets). In that proceeding, the Department found that the sale by CL&P would benefit consumers and was in the public interest. The Department stated that:

> The record indicates that a designation of the assets as EWGs would contribute to the development of a competitive wholesale generation market and is, therefore, in the public interest… [B]ecause competing wholesale generators will be an integral part of the competitive generation industry that the Act was designed to enable, the Department finds that the designation of [CL&Ps] assets does not violate state law, but rather, furthers the objectives of the state law [D.T.E. 00-69, p. 4].

The Department also issued the same findings pertaining to EWG status to CL&P in an earlier proceeding (D.T.E. 99-80 (November 26, 1999) (sale of certain CL&P assets to NRG Energy, Inc. and Northeast Generation Company)). In addition, the Department has made similar findings in numerous other divestiture-related proceedings. *See*, *Western Massachusetts Electric Company*, D.T.E. 99-74, pp. 12-14 (2000); *Western Massachusetts Electric Company*, D.T.E. 99-29, pp. 13-15 (1999); *Fitchburg Gas and Electric Light Company*, D.T.E. 98-121, pp. 11-13 (1999); *Eastern Edison Company and Montaup Electric Company,* D.T.E. 99-9, pp. 19-20 (1999); *Cambridge Electric Light Company/Commonweath Electric Company/Canal Electric Company*, D.T.E. 98-78/83, pp. 12-15 (1998).

IV. CONCLUSION

CL&P has adduced abundant, persuasive evidence supporting its request for eligible facility findings in this proceeding. There is, in fact, no evidence on this record to support any contrary result. Accordingly, the Department should issue the requested finding. CL&P requests that the Department make the requested findings by September

6, 2002, contemporaneously with the two requests for approval of asset divestiture filed by New England Power Company, and Canal Electric Company and Commonwealth Electric Company and Cambridge Electric Light Company (*see* D.T.E. 02-33 and D.T.E. 02-34, respectively), which would facilitate a simultaneous closing on all Seabrook Station ownership interests being sold.

Respectfully submitted,

THE CONNECTICUT LIGHT AND POWER COMPANY

By Its Attorney,

_____

Stephen Klionsky
101 Federal Street, 13th Floor
Boston, Massachusetts 02110
Tel. 617/748-5140
Facsimile 617/748-5151
e-mail: klionsh@nu.com

Dated: July 31, 2002